



The Trustee's and Beneficiary's Guide to Florida Trust Accountings

by Gregory S. Bloshinsky, Esq.

GBloshinsky@Law-Morris.com

Under Florida's new trust laws, generally, the Trustee of an irrevocable trust is required to keep beneficiaries of the trust reasonably informed about the trust and its administration. This article provides a simplified guide to Trustees and trust beneficiaries regarding the new trust law related to this duty to inform and account.

BENEFICIARIES DEFINED. This duty to inform and account under the new law is owed to a "qualified beneficiary" of an irrevocable trust. A "qualified beneficiary" is defined as any living beneficiary who currently receives trust income or principal or would receive trust income or principal if the current beneficiary's interest terminated.

REQUIREMENTS. To meet a Trustee's responsibilities to inform and account, the Trustee is required to do the following:

- Within 60 days after acceptance their position as Trustee of the trust, the Trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the Trustee.
- Within 60 days after the date the Trustee becomes aware there is an irrevocable trust, whether by the death of the Grantor (person(s) who established the trust) or otherwise, the Trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the Grantor(s), the right to request a copy of the trust instrument, and the right to accountings.
- Upon reasonable request, the Trustee shall provide a qualified beneficiary with a complete copy of the trust instrument, including amendments.
- A Trustee of an irrevocable trust shall provide a trust accounting, to each qualified beneficiary annually and on termination of the trust or on change of the Trustee.
- Upon reasonable request, the Trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

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REPRESENTATION. The new Florida trust law permits a person to act as a representative for another person (i.e., the beneficiary). Therefore, any notice, information, accountings, and reports sent to a representative have the same effect as those sent to the person being represented, and actions taken by a representative bind the beneficiary. There are several different categories of representation, including:

- **Fiduciaries:** This includes a guardian of the property, an attorney-in-fact, a Trustee or personal representative. Additionally, a parent may represent an unborn or minor child if no guardian of the property has been appointed.
- **Virtual:** If not otherwise represented, a minor, incapacitated, unborn, unascertainable, or un-locatable person may be represented by another person having a substantially identical interest.
- **Court-appointed:** The court may appoint a representative for a person the court determines is not otherwise adequately represented.

In each of the above situations, representation is precluded in matters as to which the representative has a conflict of interest with the person being represented. This restriction, however, does not apply to either of the following two remaining categories of representation:

- **Powers of appointment:** a holder of either a general or a special power of appointment may represent and bind objects and takers in default of the power. However, generally, a beneficiary with a power cannot represent others while the beneficiary is serving as sole Trustee.
- **Grantor-designated:** a Grantor may appoint or designate a person to represent and bind a trust beneficiary or to receive notices, information, reports, and accounts on the beneficiary's behalf with a few exceptions such as a designated representative who is also a Trustee may not represent or bind a trust beneficiary while serving in that capacity.

TRUST ACCOUNTING. A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the Trustee became accountable, that adequately discloses the following information:

- The accounting must begin with a statement identifying the trust, the Trustee, and the time period covered by the accounting.
- The accounting must show all cash and property transactions and all significant transactions affecting administration during the accounting period, including compensation paid to the Trustee and the Trustee's agents. Gains and losses realized during the accounting period and all receipts and disbursements must be shown.

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- The accounting must identify and value trust assets on hand at the close of the accounting period.
- The accounting must show significant transactions that do not affect the amount for which the Trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.
- The accounting must reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.
- The Trustee shall include in the final accounting a plan of distribution for any undistributed assets shown on the final accounting.

WAIVERS AND USE OF INVESTMENT STATEMENTS. Certain trustees, at the request of the trust beneficiaries, might not want to incur the costs associated with preparing annual statutory trust accountings. Under the new Florida trust law, a qualified beneficiary may waive the Trustee's duty to account. The waiver can be effective until the beneficiary withdraws the waiver previously given. Withdrawals of prior waivers are effective only with respect to accountings for future periods. Waivers and withdrawals of prior waivers must be in writing. Importantly, the Grantor of an irrevocable trust cannot waive the Trustee's obligation to provide an annual accounting to the beneficiaries. This power to waive is held strictly by the beneficiaries.

Another option to reduce the trust accountings costs of trust administration is to utilize the monthly, quarterly, or annual statements issued by the trust advisor reporting all trust activities as the trust accounting. Assuming the accounting is relatively simple, the situation might be appropriate for using the investment statements as the annual accounting. The Trustee could determine whether to prepare an additional summary or exhibit to comply with Florida law, depending on the circumstances. Alternatively, all of the beneficiaries could consent to accepting the investment statements in lieu of a formal accounting.

Whether you are a Trustee or a beneficiary, you must be aware of these guidelines and should consult with your trust administration attorney if you have any questions regarding how the new Florida trust law impacts you in relation to the trust.

Gregory S. Bloshinsky, Esq. concentrates his practice in the areas of wills, trusts and estates. He represents medium to high net worth individuals and their families, providing a wide range of estate planning and estate administration services. His representation is very hands-on and tailored to each client's special needs and circumstances.